

REMARKS/ARGUMENTS

Claims 1, 5, 8, 11-22, and 36 are pending in this application. Claims 1,5, 8, 11-22, and 36 stand rejected. The issues raised in the final Office Action of December 1, 2009 are as follows: Claims 1, 5, 8, 11-22, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,291,533 to Fleischner (hereinafter Fleischner) in view of An Outstanding Food Source of Vitamin C, The Lancet, Vol. 320 Issue 833, p. 873 to Brand et al. (hereinafter Brand) and further in view of U.S. Patent Publication No. 2002/0192314 to Cho et al. (hereinafter Cho).

In the recent decision of *In re Kubin*, 561 F.3d 1351 (Fed. Cir. 2009), the Federal Circuit explained that it is improper to build a rejection for obviousness by “merely throw[ing] metaphorical darts at a board filled with combinatorial prior art possibilities, courts should not succumb to hindsight claims of obviousness.”

Applicants respectfully traverse the outstanding claim rejection and request reconsideration and withdrawal in light of the remarks presented herein. The examiner is directed to Figure 2 of the application. In Figure 2 and the explanation thereof, synergy is observed most readily when quercetin is provided at between 40 and 90%, wherein synergism is observed above the line. Nothing in Fleisher indicates that this is the case or that would motivate the skilled artisan to select the additional components in claim 1 out of thousands of possible options. Using the specification of the present invention the Action finds the present invention out of thousands of “metaphorical darts” to piece together the claimed invention. Absent the present specification, there is no motivation to combine the components to develop the present invention or to provide the surprising synergistic results found by the present inventors. Therefore, the prima facie case for obviousness fails based on the combination of references.

Accordingly, claims 1, 5, 8, 11-22 and 36 are not rendered obvious by Fleischner, Brand and Cho, or any combination thereof. Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. § 103(a).

CONCLUSION

In light of the remarks and arguments presented above, Applicants respectfully submit that the claims in the Application are in condition for allowance. Claims 1, 5, 8, 11-22, and 36 have been allowed. Favorable consideration and allowance of the pending claims 1, 5, 8, 11-22, and 36 are therefore respectfully requested.

This paper is being filed with all required fees; however, if any additional fees are necessary the Commissioner is hereby authorized to charge any fees, including those for an extension of time, to Chalker Flores, LLP's Deposit Account No. 50-4863.

If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

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Respectfully submitted,
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